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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 596

GRANITEVILLE MANUFACTURING COMPANY,
APPELLANT,

vs.

W. G. QUERY, J. P. DERHAM, AND F. C. ROBINSON, PERSONALLY AND AS MEMBERS OF SOUTH CAROLINA TAX COMMISSION, RESPONDENTS.

ARGUMENT FOR APPELLANT

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(35,518)

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ARGUMENT FOR APPELLANT

This is an appeal from an order of a Statutory Court of Three Judges refusing an interlocutory order sought by the appellant in the District Court, for the Eastern District of South Carolina, to enjoin the respondents as members of the South Carolina Tax Commission from collecting a tax under a Statute of the State of South Carolina. The opinion of the Statutory Court is reported in 44 Fed. (2nd) 64.

A statement of jurisdictional grounds has been heretofore submitted. The federal question lies in the contention that there is an attempt to levy and collect a tax on property that has no taxable *situs* in South Carolina, and is non-existent therein, and that the proceedings and statute thereabout are repugnant to the Fourteenth Amendment of the Federal Constitution. This question was, of course, made before the Statutory Court. The tax in question is $5,020.46. The Statutory Court affirmatively held with appellant (R. 31) that the taxing statute provided no adequate remedy at law, and that if appellant is entitled to relief that an injunction would be essential. No argument is presented herein as to this question, as the opinion of the Statutory Court fully covers this matter, and as there is no assignment of error to the contrary. Appellant relies upon all of its assignments of error.

Statement of Facts and of Appellant's Contention.

On March 26, 1923, the South Carolina Legislature passed an Act (AA. 1923, page 12), "to raise revenue for the support of the State Government." The Act first levied a tax "for and in respect of the several bonds, debentures or certificates of stock and of indebtedness and other documents, matters, and things mentioned and described in Schedule *A* of this Act, or for *and in respect of the vellum, parchment, or paper* upon which said instruments, matters, or things, or any of them, are written or printed." (Italics added.) Schedule *A* included "promissory notes," and provided for the affixing of a two cent stamp for each one hun-

dred dollars or fractional part thereof represented by said note. This was the first Documentary Stamp Act of the State of South Carolina. This original documentary stamp tax has been brought forward in four of the acts cited in the eighth paragraph of the complaint with no material change save as to the rate of the tax, and said tax now exists under Act 574, page 1089 of the Acts of 1928.

The Graniteville Manufacturing Company (hereinafter referred to as the Graniteville Company), throughout its existence, has been in the habit of financing its operations by borrowing on its promissory notes, from time to time, large sums of money. Practically all of these notes were executed at its office in Graniteville, South Carolina. It has always stamped its notes given to South Carolina bankers; it has always refrained from stamping its notes given to bankers and banking houses beyond the State of South Carolina—in good faith, believing that this was unnecessary. Shortly before this proceeding was commenced, an inspector of the South Carolina Tax Commission visited the Graniteville Company and, upon being allowed, at his request, free access to the books and notes of the Company, raised the contention that all notes given by the Graniteville Company and executed at Graniteville since the passage of the first Documentary Stamp Act should have borne documentary stamps of the State of South Carolina. He assessed a tax amounting to $5,020.46, and, as his assessment, left a schedule which is set out in the complaint as Schedule *A* (R. 16). The Tax Commission

then threatened, by issuing execution against its property, to force the Graniteville Company to purchase documentary stamps amounting to $5,020.46, and to affix the same to the canceled notes, and to cancel said stamps.

The Graniteville Company then brought this suit and obtained a temporary injunction (R. 28) which was vacated by the Statutory Court called to the assistance of the District Judge, which Statutory Court refused to issue an interlocutory injunction. Thereupon, this appeal was taken, a supersedeas having been granted.

It is the claim and contention of the Graniteville Company, both before the Statutory Court and before this Court, as its first position, based upon the recent series of decisions of this Court as to the taxation of intangibles: that the notes involved (all of which were executed by it and delivered to bankers doing business and having their business domiciles in New York, Boston, and Augusta, Georgia), had their taxable *situs* respectively in New York, Boston, and Augusta, alone; and that said notes, and none of them, could have any taxable *situs* in the State of South Carolina; and that no tax could be levied upon said notes by the State of South Carolina; and that the effort to do so is beyond the *power* of the State of South Carolina.

The Graniteville Company further claims, as a second position, that when its President signed in South Carolina one of the pieces of paper in question and mailed it to his banker in New York (say), that said paper did not become a note *in the taxable sense of the word* until it was finally accepted by the banker in

New York, for the reason that said note was revocable by the plaintiff until its final acceptance by the banker, and for the further reason that the banker, until he actually did place the money to the credit of the plaintiff in New York, could withhold his acceptance of said note.

All of the facts above stated were agreed facts so stated in a stipulation of counsel to be found in the record (R. 2-3).

In other words, it is the claim of the Graniteville Company that none of the notes executed by it in South Carolina had a taxable *situs* within the State of South Carolina, and specifically that none of the papers in question actually became *notes* and never existed as notes in a taxable sense within the State of South Carolina.

It should be noted that a very small per cent of the notes in question were actually executed in Augusta, Georgia, and that the Statutory Court held that this small per cent of said notes were not taxable by the State of South Carolina. No appeal has been taken from this decision. The tax upon such notes, however, amounts to but a few hundred dollars.

Law Relied on as to the First Contention.

Appellant relies as to its first contention, which is that the notes in question have no taxable *situs* in South Carolina, but have a taxable *situs* only where their owners are domiciled: namely, in New York, Massachusetts, and Georgia, upon the recent series of decisions of this Court which abolished the old rule

of Blackstone *vs.* Miller, 180 U. S. 189, and established a new rule as to taxation of intangibles. These cases are:

Blodgett *vs.* Silberman, 277 U. S. 1.
Safe Deposit & Trust Company *vs.* Virginia, 280 U. S. 83.
Farmers Loan & Trust Company *vs.* Minnesota, 280 U. S. 204.
Baldwin *vs.* Missouri, 280 U. S. 566.
Beidler *vs.* South Carolina Tax Commission, decided November 24, 1930, 282 U. S. 1.

Under the rule established in the Blackstone case, certainly as to inheritance taxation, the State in which the debtor resided and in which the note was created might collect a tax as well as the State of the domicile of the creditor, upon the general theory that the debtor's State lent protection to the note. After deciding the Connecticut case (Blodgett *vs.* Silberman) and the Virginia case, which was a property tax case, and in which the maxim *mobilia sequuntur personam* was approved and enforced as to intangibles, this Court in the Minnesota case overruled the Blackstone decision expressly, and announced *a new rule for the taxation of intangibles.*

This Court first used the following language, which may be said to be the keynote of the present litigation, to-wit:

> "A very large part of the country's wealth is invested in *negotiable securities*, whose protection against discrimination, *unjust and oppressive taxation is matter of greatest moment.*" (Italics added.)

Then the Court stated the new rule as follows:

> *"We have determined that in general intangibles may be properly taxed at the domicile of their owner; and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to intangibles."* (Italics added.)

Shortly after this Court announced the new rule for the taxation of intangibles, the Missouri case (Baldwin *vs.* Missouri) was decided; the facts and findings in which are, we submit, especially applicable to the present litigation inasmuch as in the present litigation the contention of the State of South Carolina and the finding of the Statutory Court is that the notes in question may be taxed because they were signed in South Carolina.

In the Missouri case the decedent resided in Illinois. She had two bank accounts in the State of Missouri. She also owned sundry promissory notes secured *by mortgages on Missouri real estate, which notes and mortgages were actually physically kept in Missouri.* This Court held:

> "We find nothing to exempt the effort to tax the transfer of the deposits in Missouri banks from the principles applied in Farmers Loan & T. Co. *vs.* Minnesota, *supra.* So far as disclosed by the record the situs of the credit was in Illinois where the depositor had her domicile. There the property interest in the credit passed under her will; and there the transfer was actually taxed. This passing was properly taxable at that place and not otherwhere.

> "The bonds and notes, *although physically within Missouri,* under our former opinions were choses in action with situs at the domicile of the creditor. At that point they too passed from the dead to the living and there this transfer was actually taxed. *As they were not within Missouri for taxation purposes the transfer was not subject to her power.* Rhode Island Hospital Trust Co. v. Doughton, 270 U. S. 69, 70 L. ed. 475, 43 A. L. R. 1374, 46 Sup. Ct. Rep. 256."

It is to be particularly noted that although the notes in question were as the Court stated it "physically within Missouri," that the Supreme Court held that "*they were not within Missouri for* taxation purposes," and hence were "*not subject to her power.*"

Hence, we submit that although the notes that we are concerned with in the instant case were executed in South Carolina, and although, after they have been paid and canceled, they have been brought back to the State of South Carolina and were found by the inspector of the Tax Commission within the State of South Carolina, still for the purposes of taxation they could have but one taxable *situs* and that taxable *situs* was at the domicile of the bank to whom each note was given, which domicile was in New York, Massachusetts or Georgia.

It is not anticipated that the fact that no documentary stamps are required to be placed upon the promissory notes in New York (say) will, in any fashion, affect the question. New York State requires the affixing of stamps on the transfers of stock in the great New

York Stock Exchange, thereby having definitely entered the field of documentary stamp taxation (Beane *vs.* Flint, 204 N. Y. 153, 97 N. E. 496).

In the Missouri case, *supra*, this Court denied the plea that because the taxpayer *might evade the payment* of the tax in Illinois, that this gave Missouri a right to assess a tax. The point is not that the notes signed by the plaintiff are actually taxed in New York, but that their *only taxable situs* under the recent decisions of the United States Supreme Court is in New York (say) and not in South Carolina.

Findings of the Statutory Court Upon the First Issue and Argument Thereupon.

(1) *The Nature of the Tax.*

The Statutory Court first agreed with the appellant, and held, we submit, correctly, that a tax levied by the South Carolina Documentary Stamp Tax Act was not a license tax—not a tax on the privilege of signing the notes—but was a direct tax on the notes themselves. The Court said (R. 33):

> "The tax in question, by the terms of the Act, *is not a license tax,* but a documentary tax. It is unnecessary to enter into any complete analysis or description of the Act; but a careful reading of it discloses that the first taxes levied are documentary taxes, expressly so declared by the terms of the Act, *levied directly on the documents themselves.*" (Italics added.)

The Court further said (R. 37):

> "The tax is laid upon the documents themselves."

The correctness of this holding is demonstrated by the fact that the South Carolina Documentary Tax Act is copied bodily from the Emergency War Expenditures Act passed by Congress on June 13, 1898 (U. S. Stat. at Large, Vol. 30, pp. 448, 451). That Act was construed by this Court in Nichol *vs.* Ames, 173 U. S. 509, 519. In referring to the part of the Act of Congress which was borrowed by the South Carolina Act, this Court said:

> "The tax laid, in the same Act, upon a broker's note of sale is a separate tax; although it may have reference to the same transaction, *it is a tax on the note or memorandum itself.*" (Italics added.)

(2) *Can the Tax be Sustained, or Not, as Being a Tax on the Creation of the Notes?*

After holding that the South Carolina tax was not a license tax but "*a tax levied directly on the documents themselves,*" the Statutory Court, after adverting to the new rule laid down by this Court in the Minnesota decision, held that the notes in question, although owned by a banker in New York (say), could be taxed in South Carolina because they were created in South Carolina. The Court said:

> "But the tax in the present case is a tax *upon the creation within the State of South Carolina*

> *of evidences of a debt.* These notes were created, if not wholly, certainly partly, within the State of South Carolina. The object taxed therefore, namely, *the creation* of the evidence, was within the State, and subject to the power of the State." (Italics added.)

In reply to this holding, we submit, first, that if the Act is not a License Tax Act, that it cannot be a tax *on the creation* of the notes. We submit that if it be a tax, as the Court has held, "*directly on the documents themselves,*" that it cannot be a tax on the creation of the documents. To take the case as we find it, we submit that the fact alone that the tax in question is not a license tax is fatal to its present enforcement.

But the broader objection we submit to the Court's holding is that the reasoning indulged in by the Court is not a successful differentiation of the instant case from the new rule of taxation of intangibles set out in the Minnesota decision. The new rule was established specifically to *protect negotiable securities from taxation in the State of their creation,* and in the State where they must be enforced, and to permit taxation only in the State in which their owners are domiciled. Now, to allow South Carolina to tax the notes involved in this litigation, under any kind of taxing law (whether it should be a License Tax Act or not), because they are created in and under the laws of South Carolina, would be to hark back to the rule of the Blackstone decision, we submit, which old and now abrogated rule allowed a tax to the debtor's State because that State lent the protecting wing of its laws to the

notes or the debt throughout their whole existence, both in their creation and in their final enforcement. In the Minnesota decision, in the Missouri decision, in the Virginia decision, and in the South Carolina decision of Beidler *vs.* South Carolina Tax Commission—in each of these cases the debts were contracted and created, and the notes, bonds, or evidences of indebtedness in each of said cases in which the same existed, were created in the States of the domicile of the debtor, just as the notes in the present case were signed and created, in part, at least, in South Carolina; but, in each of the cases stated, the fact that said debts, notes, or securities were created in the State of the domicile of the debtor, were not allowed under the new rule enunciated in the Minnesota case to be sufficient to permit any State other than the State of the domicile of the debtor to collect a tax.

(3) *The Fiction or Maxim Mobilia Sequuntur Personam as Applicable to Documentary Stamp Taxation.*

The Statutory Court further intimated that the new rule laid down in the Minnesota case as to the taxation of intangibles, which definitely applies to property taxation (as held in the Virginia case: Safe Deposit & Trust Company *vs.* Virginia, *supra*) and to inheritance taxation, cannot be applied to documentary stamp taxation.

In reply to this position, we submit that Mr. Cooley in his Work on Taxation, at section 42, states that there are only three kinds of taxes:

(1) Property taxation,

(2) Capitation taxation, and

(3) Excise taxation.

In Section 1673, Mr. Cooley states that the third of his great divisions of taxation—excise taxation—is in turn divided in many subdivisions. One of these subdivisions is inheritance taxation; and another subdivision is documentary stamp taxation. In Section 47 he specifically says: "Stamp taxes are one form of excise taxes." This Court then has applied the new rule as to the taxation of intangibles, to property taxation, the first of the three recognized main divisions into which all taxation must fall. This Court has also applied the rule specifically to inheritance taxation, which is a subdivision of the third main division of all taxation, to wit, excise taxation. Documentary stamp taxation is but another subdivision of excise taxation. As the new rule applies to property taxation and to inheritance taxation, which is but one form of excise taxation, we submit that this Court has evinced by its recent decisions an intention to cover the whole field of the taxation of intangibles by the new rule, and that there is no reason to go back to the old rule in order to sustain the proposed South Carolina Documentary Taxation.

The Second Issue.

The Notes Were Non-existent as Taxable Notes in South Carolina.

Our second position is that, from a standpoint of taxation, at least, the notes involved in this case never

actually became notes until their final delivery and final acceptance was completed. That until then they were nullities; mere pieces of paper. That the final delivery and acceptance in question (referring to the New York notes hereafter as typical of all notes) occurred in New York City; that then—and then only—did they become notes; until then they were revocable by the Graniteville Company. The agreed statement of facts in this case (R. 23) show that all of the notes were payable in New York (say), and that the contract between the banks and the Graniteville Company, in each instance, arranging for an indefinite line of credit, was entered into in the *office of the bank in New York;* "each specific loan to be made thereafter to be subject to acceptance by the bank from whom it was sought." That thereafter the plaintiff, in each instance, after making an inquiry only "as to the then existing discount rate," and with no committal whatsoever on the part of the bank that it would make the specific loan, would sign and mail the notes from South Carolina. Then the agreed statement of facts expressly states the facts to be, "That said paper *was subject to withdrawal and revocation by the plaintiff until it was actually received by the bank in question* in the City of New York * * *, and until said note after its acceptance in New York * * * *was accepted by said bank* and the proceeds thereof were actually put to the credit of the plaintiff." Hence, we submit that it took much more than the mere signing of the papers in question to make them *notes.*

The Statutory Court held, in keeping with its decision upon the first issue, that the tax was levied upon the act of creation and that the South Carolina Statute is broad enough to cover that act. We respectfully submit that the matter is not one of statutory construction at all, but rather is a consideration of when and where the papers, although signed in South Carolina, actually became, in fact, *notes*. If the signing in South Carolina did not make them notes, then they were never notes in South Carolina, and hence were not taxable in South Carolina as notes. From the standpoint of the law of taxation there is a dearth of decisions; there being few, if any, States which tax notes other than South Carolina. Some light can be found, however, in the myriad of cases on the subject of the conflict of law as to notes—that is, if a note is signed in South Carolina (say) in favor of a payee in New York (say), does the law of New York or South Carolina govern.

We submit that the law is that the place of the signing of the note is not important. That even if the note is signed in South Carolina and mailed to New York that if by its terms it is payable in New York, all matters as to its performance are automatically controlled by the laws of New York; and as to its execution, even though it is signed in South Carolina and mailed to New York, that the delivery was not accomplished in South Carolina, but it was accomplished in New York and the laws of New York would control (1) if the plaintiff had the right of revocation until the note reached New York and until it was actually cashed by

the bank and the money put to the plaintiff's credit, or (2) if final acceptance by the bank is not accomplished until after the note arrives in New York.

In other words, the place of payment and the place of final delivery and of final acceptance are pivotal, and it will be found that the cases which hold that the law of the place of signing and mailing govern, are practically all cases in which the payee has sent a note to the maker for his signature, usually a renewal; and by signing at his domicile and mailing therefrom, the maker finally accepted the payee's proposal, and thereby at his (the maker's) domicile completely closed the contract *and lost complete control of the note,* and of his right of revocation, the acceptance of the payee having already been accomplished by his original proposal.

The Statutory Court seemed to agree with us that even though the notes in question were signed in South Carolina that, inasmuch as they were made payable in New York, were subject to revocation until they were finally accepted, and required final acceptance in New York by the banker before either the Graniteville Company or the banker became bound by them, that the law of New York would wholly cover them and that the law of South Carolina could not be invoked as controlling either their performance or their execution, although they were signed in South Carolina and mailed from South Carolina. Inasmuch as the Statutory Court has not disputed our position in this regard, we are not setting out in the body of this argument the authorities upon which we rely to establish these con-

clusions, but are setting the same out in an Appendix hereto.

It is our claim that if the notes in question cannot be said to be subject to the laws of South Carolina either as to their execution or as to their performance, that as notes they cannot be said to have ever existed in South Carolina. And, we submit, that when we come to a question of taxation that an even stricter rule should apply. The Supreme Court of South Carolina has definitely held that all substantial doubt should be resolved against the validity of a tax.

Columbia Railway & Gas Company *vs.* Carter, 127 S. C. 472;

Fuller *vs.* South Carolina Tax Commission, 128 S. C. 14;

Smith *vs.* State Highway Commission, 138 S. C. 374.

In its final analysis, the claim of the State of South Carolina is and must be, that although the Act in question is not a License Tax Act that the State claims a tax directly upon the notes themselves, although the laws of the State of South Carolina can in no fashion apply to them either as governing their execution (creation) or performance, and although the papers in question could not possibly become notes as long as they were within the borders of the State of South Carolina. To the contrary, we submit that what made them *notes* was what finally occurred in New York: namely, the final acceptance of the papers in question; their being discounted; and the money being placed to the credit of the Graniteville Company—all of which

occurred in New York and nowhere else. It was not until this occurred in New York that the right of the Graniteville Company to recall them ceased to exist.

We submit that the right of the State of South Carolina to tax the notes in question must be denied for both of the considerations hereinbefore set out, namely, (1) that the notes had no taxable *situs* in South Carolina, and (2) that the papers in question were non-existent as notes as long as they remained within the borders of the State of South Carolina.

All of which is respectfully submitted.

P. F. HENDERSON,
HENDERSONS & SALLEY,
Appellant's Attorneys.

APPENDIX.

Herein we set out the authorities submitted to the Statutory Court upon the second issue discussed in our argument.

These authorities, we submit, establish the fact that the law of New York (say) and not the law of South Carolina, would govern the notes in question both as to matters concerning their performance, but also as to matters concerning their execution. Said notes were signed in South Carolina, and mailed from South Carolina to New York, but were drawn payable in New York and were subject to final acceptance in New York and were revocable by the Graniteville Company until finally accepted.

The uniform negotiable instrument act which has been in force in all of the states in question for many years, provides as to revocations:

> "SECTION 16. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto."

Coughlan *vs.* South Carolina Railroad Company, 142 U. S. 101.

In this case the South Carolina Railroad Company executed bonds, which were executed within the State of South Carolina and transmitted presumably by mail to London, England. They were expressly made payable in London, both as to principal and interest. Default was made in the payment of the interest coupons. Upon foreclosure brought, a controversy arose as to whether or not the bonds, after default in the coupons, would bear interest at seven per cent under the law of South Carolina or at five per cent, the rate in force in England. The United States Supreme Court held that the bonds were to be looked upon as English bonds and were to be governed by English

law, although they had been signed in South Carolina and had been forwarded to England. The pivotal point was that by their terms they were made payable in England. The Court said:

> "A contract therefor was one which, in all of its parts, was to be performed in England. Nevertheless it is contended that the principal sum agreed to be paid should bear interest at the rate of seven per cent fixed by the laws of South Carolina. *The only basis for this contention is the fact that the bonds purport to have been made in that state, but that fact is not conclusive.* * * * They were to be paid in pounds sterling at a designated house in London. The fair inference is that the Railroad Company *negotiated the bonds abroad and made them payable in that City in order to facilitate a sale of them to foreign buyers.*" (Italics added.)

The Rule that the Place of Physically Signing is Not the Place Where the Contract is Made.

Barrett *vs.* Dodge, 27 A. S. R. 779:

The Supreme Court of Rhode Island in this case used the following pertinent language:

> "The authorities agree that if no particular place of payment is specified in the note, or if, in other words, it is payable generally, the law of the place where it is made determines not only its construction but also the obligation and duty it imposes on the maker. * * * *But, by the place where the note is made is not meant the place where it is written, signed, and dated, but the place where it is delivered, delivery being essential to its consummation as an obligation.*" (Italics added.)

This is a case in which the note was signed in one state and transmitted by mail to another.

Delivery and Acceptance Govern—General Rule.

3 R. C. L., page 859:

> "It is an essential ingredient in every written contract that it be delivered by the party obligating himself, to some one who has a right to control it; the delivery, being the evidence of the assent of the promisor, and the reception by the promisee, consummates the contract. And so as a general rule, a negotiable promissory note, like any other written instrument, has no legal inception or valid existence as such until it has been delivered in accordance with the purpose and intention of the parties. And an actual or constructive delivery, *being the final act in the execution of a note*, is as essential to impart validity to the paper as is the signature of the maker. *Until that is done, it is a nullity.*" (Italics added.)

Acceptance by Payee Necessary to Complete Delivery.

8 *Corpus Juris*, Section 240:

> "To complete a delivery and make it effective the bill or note must be accepted by the payee or by some one acting for him."

Effect of Delivery by Mail.

Phipps *vs.* Harding, 70 Fed. 468:

In this case a note was written and executed in Wisconsin and sent in the United States mail to the payee in Massachusetts, and the question of the law of which one of these states governed it, became vital. With

these facts before it, the Circuit Court of Appeals said:

> "If delivered at a place other than at the place of execution, the law of the place where delivered controls. Daniel Neg. Inst. Sections 868-899. Slacum *vs.* Pomeroy, 6 Cranch, 221; Musson *vs.* Lake, 4 How. 262."
>
> Note to Ann. Cases, 1915-D.

The Editor treats this question quite fully, and from his work we quote somewhat copiously:

> "A bill or note drawn and signed in one jurisdiction but mailed from there to the payee in another jurisdiction is deemed to *be executed* where it is so *mailed if the delivery to the post office consummates the contract between the maker and the payee.* If, however, the bill or note *is not binding on its obligors from the time of mailing, its efficacy being contingent on its acceptance by the payee, then the bill or note is executed where it is received and accepted by the payee.* McGarry *v.* Nicklin, 110 Ala. 559, 17 So. 726, 55 Am. St. Rep. 40; Navajo County Bank *v.* Dolson, 163 Cal. 485, 126 Pac. 153, 41 L. R. A. (N. S.) 787; Nashua Sav. Bank *v.* Sayles, 184 Mass. 520, 69 N. E. 309, 100 Am. St. Rep. 573. * * *
>
> "Applying the rule heretofore stated it has been held in a number of instances that an instrument sent by mail into another jurisdiction *is executed where it is received by the payee,* the transaction being consummated by such receipt." (Citing eighteen representative decisions. Italics added.)

Cherry *vs.* Sprague, 105 A. S. R. 381:

In the statement of facts at page 382, it appears—"It was admitted that all of the signatures to the in-

strument were placed thereon in Massachusetts and it was mailed from that place to the plaintiff in South Dakota." The Court ruled:

> "As the instrument was a promissory note and *as it was payable in South Dakota and was sent to the payee by mail and received by him in that state it was a South Dakota and not a Massachusetts contract:* Nashua Sav. Bank *v.* Sayles, 184 Mass. 520, 522, 100 Am. St. Rep. 573, 69 N. E. 309, and cases cited; Callender, McAuslan & Troup Co. *v.* Flint, 187 Mass. 104, 72 N. E. 345." (Italics added.)

First National Bank *vs.* Shaw, 97 A. S. R. 840:

The facts are stated as follows:

> "The note sued on was received by the Bank of Geneva, Ohio, through the mail from Chattanooga, Tennessee."

The Court ruled:

> "Says Mr. Tiedeman, in his work on Commercial Paper, page 506: 'It is not the law of the place where the contract *was signed or executed,* but the law of the place *where the contract was consummated,* by delivery or otherwise, which governs the construction of the contract made in one state, to be performed in another. Thus, notes drawn in one state, and delivered and payable in another, for purchases made there, are governed by the law of the latter state, *and are considered there made; for by delivery, only the act of making is fully consummated.*'" (Italics added.)

Bell *vs.* Packard, 31 A. S. R. 252:

In this case a note was signed in Cambridge, Massachusetts and sent by mail to the payee in Skowhegan, Maine. The Court ruled:

"Our opinion is that the note was made and intended by the parties to be paid in Skowhegan. For although it was signed in Cambridge, it was delivered to the payee in Skowhegan; *and it was not a completed contract until delivered.* This proposition needs no citation of authorities, still we cite Lawrence *v.* Bassett, 5 Allen, 140, as precisely in point."

As to the fact that a line of credit had been arranged in New York prior to the mailing of any of the notes to New York, of an indefinite amount beyond which the notes could never go, attention is called to the fact that in the decision of this Court in Boyce *vs.* Edwards, 4 Peters 22, it is held that such a general arrangement cannot be looked upon as a specific acceptance of the various notes later delivered. In addition to that the agreed statement of facts specifically states that "each specific loan to be made thereafter being subject to acceptance by the specific bank from which it was sought."

From the foregoing, we submit that as the notes in question were arranged for in New York, were made payable in New York, were mailed from South Carolina to New York with the full understanding as is stated in the agreed statement of facts that they were revocable until they were actually received by the bank in New York and actually cashed, and especially as they were specifically subject to final acceptance or refusal by the bank after they reached New York, that as a matter of law they are to be considered as being notes and contracts made in New York and under the laws of New York.

Respectfully submitted,

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